

APPEAL NO. 040281
FILED MARCH 26, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 9, 2004. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) compensable injury of _____, does not extend to and include any injury to the claimant's neck or low back, and that the claimant has not had disability. The claimant appeals, contending that the hearing officer's decision is against the great weight and preponderance of the evidence. The respondent (carrier) asserts that the evidence supports the hearing officer's decision.

DECISION

Affirmed.

The claimant had the burden to prove that his compensable injury included an injury to his neck and low back, and that he had disability as defined by Section 401.011(16). Conflicting evidence was presented at the CCH on the issue of the extent of the compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence on the issue of the extent of the compensable injury, we conclude that the hearing officer's determination that the claimant's compensable injury does not extend to and include any injury to the claimant's neck or low back is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The claimant continued to work his regular duties for about a month after his compensable injury. He was then involved in an incident at work that resulted in his being fired for unsafe operation of machinery. Medical reports reflect that the claimant's treating doctor then placed the claimant on an off-work status due to claimed injuries to the neck and low back from the compensable injury of _____. The hearing officer determined that the claimant did not have disability as defined by Section 401.011(16). Because we are affirming the hearing officer's determination that the claimant's compensable injury does not include an injury to the claimant's neck and low back, we likewise affirm the hearing officer's determination that the claimant has not had disability.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge